

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 21

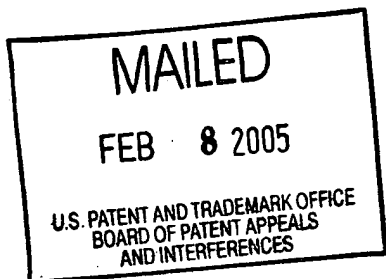
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROLF JANSEN

Appeal No. 2005-0378
Application No. 09/232,566

ON BRIEF



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Before MCQUADE, NASE and BAHR, Administrative Patent Judges.
MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Rolf Jansen originally took this appeal from the final rejection (Paper No. 6) of claims 3 and 4, the only claims pending in the application. Upon consideration of the appellant's main brief (Paper No. 9), the examiner issued an Office action (Paper No. 12) reopening prosecution and entering superseding rejections of the claims. Pursuant to 37 CFR § 1.193(b)(2)(ii), the appellant then filed a supplemental brief (Paper No. 16) and requested that the appeal be reinstated.

Implicitly granting the request, the examiner entered an answer (Paper No. 17) and forwarded the application to this Board for review of the new rejections of claims 3 and 4.

THE INVENTION

The invention relates to a system that enables the driver of a tractor/trailer rig to see the area behind the trailer from the cab of the tractor when backing the rig. Claims 3 and 4 read as follows:

3. An assembly of a camcorder-type liquid crystal display monitor, comprising means for mounting said assembly to the inner retracted side of a driver's sunvisor of a motor vehicle,

whereby said sunvisor, when lowered, allows a driver easy, direct, close-range, sunlight-protected viewing of said monitor screen, as if the screen were a rear-view mirror, when used in conjunction with a video camera, to see to the rear when the unaided view is obstructed.

4. An assembly of a micro-video, pin-holed lens camera, comprising means for mounting said assembly on the reverse side of a plate, such as a license plate, at the rear of a trailer or motor vehicle, so that said camera can see through a predetermined-sized hole put in said plate,

whereby said plate-mounted assembly conceals said pin-holed lens camera to lessen the risk of vandalism,

whereby said camera is located in the ideal position at the rear of a trailer or motor vehicle for viewing a backing, when used in conjunction with a monitor.

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THE PRIOR ART

The references relied on by the examiner as evidence of obviousness are:

Abersfelder et al. (Abersfelder)	5,646,614	Jul. 08, 1997
Aviv	5,666,157	Sep. 09, 1997
Asakawa et al. (Asakawa)	5,892,598	Apr. 06, 1999
Frankhouse et al. (Frankhouse)	5,940,120	Aug. 17, 1999

THE REJECTIONS

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Frankhouse in view of Asakawa.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Abersfelder in view of Aviv.

Attention is directed to the briefs and answer for the respective positions of the appellant and examiner regarding the merits of these rejections.

DISCUSSION

I. The 35 U.S.C. § 103(a) rejection of claim 3 as being unpatentable over Frankhouse in view of Asakawa

Frankhouse discloses "a vanity console for use in a vehicle and one which provides an illuminated vanity mirror and/or video

imaging" (column 1, lines 4 through 6). With regard to the video imaging aspect of the console, Frankhouse teaches that

positioned centrally behind the mirror is a video image source, such as an LCD display, which is supplied with video information from a variety of sources such as vehicle mounted cameras such that the vanity console can serve the additional function of video imaging. . . . [T]he system may include cameras directed forwardly and/or rearwardly of the vehicle for providing rear visibility for parking, internal rear visibility for conversation with rear seat passengers or forward visibility utilizing an enhanced light amplification camera for providing video images under low ambient light conditions [column 1, line 59, through column 2, line 5].

As shown in Figure 9, the vehicle may include a rear vision camera 96 mounted at the back of the vehicle, preferably in the rear bumper area. This camera communicates with a display monitor 90 housed in the console to show objects behind the vehicle (see column 5, lines 36 through 58).

Of particular interest in this appeal is the location of the console/monitor. Frankhouse describes a number of convenient locations in which the console can be placed (see column 3, lines 26 through 35), but makes clear that the console should not be mounted on a sunvisor as this would limit desirable vanity characteristics of the console, interfere with the use of the sunvisor and block the driver's view of the roadway (see column 1, lines 7 through 38).

The examiner concedes that Frankhouse does not respond to the limitation in claim 3 requiring "means for mounting said assembly to the inner retracted side of a driver's sunvisor of a motor vehicle." To account for this difference, the examiner cites Asakawa.

Asakawa discloses a head up display unit (HUD) "which can be used in any place in the interior of an automobile" (Abstract). As a practical matter, the HUD, which has a thin transparent construction, is placed on or in the vicinity of the windshield to allow it to superimpose information on the forward scene viewed by the driver. In the embodiment shown in Figure 2, the HUD 1' "is attached like a sunvisor and is pulled down forward of the driver's seat as needed" (column 9, lines 15 and 16).

In proposing to combine Frankhouse and Asakawa to reject claim 3, the examiner submits that it would have been obvious at the time the invention was made to a person having ordinary skill in the art "to modify the teachings of Asakawa into the housing (24) of the vanity console of Frankhouse for the same purpose of mounting the LCD on the sunvi[s]or so that the driver easily views the captured video image during backing up the car without turning the driver's head" (answer, page 4).

Frankhouse, however, expressly teaches away from mounting the console on a sunvisor. Moreover, and contrary to a finding made by the examiner (see page 4 in the answer), Asakawa does not specifically teach mounting the HUD on a sunvisor. In the embodiment 1' relied on by the examiner in this regard, the HUD is merely attached "like a sunvisor," but is not ostensibly mounted on one. In this light, it is evident that the only suggestion to combine Frankhouse and Asakawa in the manner proposed by the examiner to reject claim 3 stems from hindsight knowledge impermissibly derived from the appellant's disclosure.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 3 as being unpatentable over Frankhouse in view of Asakawa.

II. The 35 U.S.C. § 103(a) rejection of claim 4 as being unpatentable over Abersfelder in view of Aviv

Abersfelder discloses a system for effectively monitoring potential parking spaces from a motor vehicle:

[t]hese needs are met according the present invention by a system having a video camera built into either the front or rear of the vehicle and a viewing and monitoring device in the field of view of the vehicle driver connected to the camera. The field of view is fitted with a display screen. The video camera is equipped with means for its pivoting (turn and tilt) as a function of electric drive signals and is of the type having object referenced image sharpness control of its optics [column 1, lines 38 through 46].

Abersfelder's Figures 1 and 2 schematically illustrate the video camera 11 built into the rear 12 of a vehicle 10 and the viewing and monitoring device 15 located so as to be within the visual range of the vehicle driver.

The examiner acknowledges that Abersfelder does not respond to the limitation in claim 4 requiring "means for mounting said assembly on the reverse side of a plate, such as a license plate, at the rear of a trailer or motor vehicle, so that said camera can see through a predetermined-sized hole put in said plate."

Nonetheless, the examiner finds and concludes that

it is well established that one skilled in the art would have [found it] obvious to mount the camera anywhere on the car, particularly on the reverse side of a license plate at the rear of the vehicle, and the camera can see through a predetermined-sized hole put in the license plate [for] a rear view when the vehicle is backing [answer, page 4].

The examiner, however, has failed to advance the requisite factual basis necessary to support such a finding/conclusion. This fundamental flaw in the examiner's evidentiary showing finds no cure in the citation of the Aviv patent for its disclosure of a hidden surveillance camera having a pin hole lens (see column 9, lines 54 through 65).

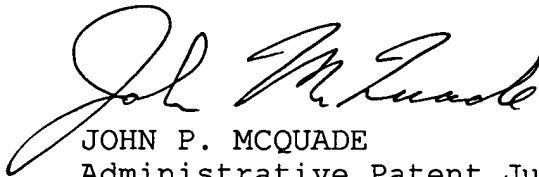
Hence, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 4 as being unpatentable over Abersfelder in view of Aviv.

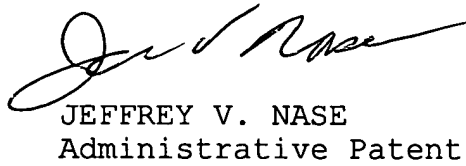
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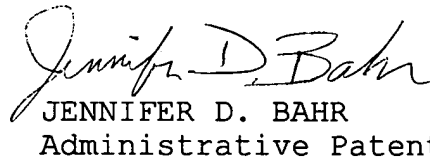
SUMMARY

The decision of the examiner to reject claims 3 and 4 is reversed.

REVERSED


JOHN P. MCQUADE
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge


JENNIFER D. BAHR
Administrative Patent Judge

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